

Third Amendment  
U.S. Patent Application Serial No. 10/039,565  
Office Action Dated: June 15, 2006  
Inventor: Andrew Mark Stringer  
Attorney Docket No. 41759-57619

### REMARKS

This Amendment is filed in response to the Office Action dated June 15, 2006 along with a one (1) month extension of time.

#### *Summary of Examiner's Interview:*

There was a telephonic interview with Examiner Neurauter and Applicant's Attorney on October 3, 2006. After an extensive discussion regarding how Leleu (U.S. Patent No. 6,088,687) only disclosed a "toll" for paying for the movement of data packet and not the monetary worth of the data packet as it moved throughout the system, the Examiner proposed amendment of Claims 1 and 8 as follows: "...to update the value contained in the data field **by increasing the value** to reflect the added monetary worth of the electronic data in the data packet associated with the action of forwarding the data packet." The Examiner believes that this would differentiate Claims 1 and 8 over Leleu due to the fact that although debiting and crediting of a token is possible, this token is only for paying a fee for use of the computer system and does not reflect the **appreciated** monetary value of the data packet that continually increases based on movement through routers in the computer system. The Examiner's input on this matter was deeply and gratefully appreciated.

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Rejections Under 35 U.S.C. Section 102(e):

Claims 1 and 8 were rejected under 35 U.S.C. Section 102 as being unpatentable over Leleu (U.S. Patent No. 6,088,687). Claims 1 and 8 are amended to recite: "...to update the value contained in the data field **by increasing the value** to reflect the added monetary worth of the electronic data in the data packet associated with the action of forwarding the data packet." This exact language was proposed by Examiner Neurauter in the telephonic interview with the Applicant's Attorney on October 3, 2006.

Support for this amendment can be found in Paragraph [0056], Lines 1-8 of Applicant's Published Patent Application as: "The router then calculates 42 **the value to be added for the service of transmitting this packet along the particular hardware connection designated by the routing tables**. This might depend upon the infrastructure of the hardware connection, the prevailing network loading, the time of day and many other factors. The router then **increments 44 the packet's value field** [5], which is the packet's internal record of its own value by this calculated value. " Therefore, no new matter has been added.

The primary difference between the Applicant's invention, as claimed, and Leleu is that the Applicant's claimed invention represents the increased monetary value of the data packet. This value is always increasing as it moves through the system and represents an appraised value of the data packet. In marked contrast, Leleu discloses:

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"The device or system according to the invention can insert, in the data packets carried by the network (in general, at the time of packet transmission), **a toll header containing a numerical value (toll token) corresponding to a toll-unit credit**" (Column 2, Lines 7-11). A "toll" is defined as a: **"fee for services"** (Encarta Online Dictionary, see Appendix A attached). Moreover, Leleu discloses: "a) assigning to each data packet to be transmitted by a network user a first value representing a so-called **"toll" monetary unit credit**, as well as the identity of the centralized financing organization supplying the credit, the credit amount **corresponding to the cost of the operations to be performed on the data packet in the data-transmission network** using at least one communication node; b) recording the first representative value and the identity of the centralized financing organization concerned; c) in at least the communication node, **reducing the first representative value by an amount representing the cost of the operations to be performed on the data packet in the node in question;**..." (Column 4, Lines 29-42). Therefore, Leleu assigns a toll value to the data packet header for payment for utilizing the system and this **amount is reduced** when payments are made as a toll in the computer system. This provides a marked contrast to the Applicant's invention that provides an amount representing the appraised value or worth of the data packet that continually increased as the data packet moves throughout the system.

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A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). In this case, the toll that is decreased when payments are made in Leleu completely discredits and discourages the Applicant's Invention by going in the opposite direction by taking payment for movement in the computer system by decreasing the value of the toll found in the data field in the header rather than providing an ever increasing value in the header for added monetary appraised worth. In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Under 35 U.S.C. Section 102, the identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover, when evaluating a claim for either anticipation or obviousness, all claim limitations must be considered. In re Evanega, 829 F.2d 1110, 4 U.S.P.Q. 2d 1249 (Fed. Cir. 1987).

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Moreover, proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in function, structure and result. In this case, the use of a toll for payment shown in Leleu is a very different function and result than the Applicant's invention where **the monetary worth of the electronic data in the data packet that is in a data field is continually increased by the forwarding of the data packet** in the Applicant's claimed invention.

It is now a basic tenet of patent law that the United States Patent Office is not permitted to ignore the results and advantages of the claimed subject matter, of which the prior art is devoid, simply because the claim limitations are similar to the otherwise barren prior art.

In addition, hindsight is not the test of anticipation nor is it alone sufficient that other disclosed devices might have been adapted without too much difficulty to produce the object and function of the Applicant's Invention. There is absolutely no motivation to modify Leleu to substitute a toll charge for a continually increasing appraised value.

In this case, it is respectfully believed that the disclosure of a toll or charge in a data field for using a computer system does not anticipate an invention that provides an ever increasing monetary worth of the data packet in the header that represents the

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ever increasing appraised value of the data packet at a particular stage in the computer system.

As discussed with Examiner Neurauter during the telephonic interview, even though Leleu discusses the ability to credit or debit a token incorporating a toll-unit in a data packet carried by a transmission network (Column 1, Lines 8-10), the debiting is merely the only mechanism available to initially place money in the system for the data packet to pay the toll and does not reflect an appreciated appraised value of the data packet associated with moving the data packet through the system.

Therefore, it is respectfully believed that Claims 1 and 8 overcome the rejection under 35 U.S.C. Section 102(e) and are patentable over Leleu and are in condition for allowance.

Claims 3-6 and Claims 9 and 12-15 are also rejected under 35 U.S.C. Section 102(e) over Leleu. Claims 3-6 and Claims 12-15 depend from Claim 1 and Claim 9 depends from Claim 8. If an independent claim is not anticipated under 35 U.S.C. Section 102, then any claim depending therefrom is also not anticipated. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Therefore, Claims 3-6 and Claims 9 and 12-15 overcome the rejection under 35 U.S.C. Section 102(e) and are in condition for allowance.

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Therefore, Applicant respectfully requests favorable consideration and allowance of this patent application, as currently amended. If an additional telephone interview would facilitate this matter, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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